



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD

### Introduction

This hearing was scheduled to deal with a Landlord's Application for Dispute Resolution for monetary compensation for damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenants' security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, the tenants stated that the person named as landlord on the Application for Dispute Resolution was not their landlord and they do not know who the person is.

The person named as landlord, whom I refer to by initials DD, was represented by LD at the hearing. LD stated that she and DD were the purchasers of the property. The tenants stated that to the best of their knowledge title to the property had not changed because they were served with a *2 Month Notice to End Tenancy for Landlord's Use of Property* indicating the tenancy was ending because: "The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit." The tenants were of the position that a person by the initials KV was agent for the owner of the property and pointed to a previous dispute resolution proceeding where KV is named as landlord (file number referenced on the cover page of this decision). I obtained a copy of the previous dispute resolution decision and noted that KV was named as landlord and the tenancy was set to end on September 30, 2017.

I asked LD whether a Certificate of Title or other land title document to demonstrate the property had been sold to DD could be provided. LD stated that there would be no such records in the land title registry because she and DD only have a "rent to own"

agreement for the subject property and they will not get ownership of the property until August 2018.

As to the reason for making this Application for Dispute Resolution, LD stated that she and DD took possession of the rental unit after the subject tenancy ended and the condition of the property was in an appalling state. When they approached KV about that, KV gave her and/or DD a letter dated October 5, 2017 giving DD and/or LD "jurisdiction" to pursue the tenants for compensation, by way of keeping the security deposit, and indicating that the any dispute concerning the condition of the property was between DD/LD and the tenants.

I asked LD whether the security deposit had been transferred to her or DD. LD stated that KV did not transfer the security deposit to them and KV continues to hold it but that KV indicated in the letter that she would "cooperate" with their efforts to pursue the tenants. LD was of the understanding that if DD succeeding in this claim against the tenants that KV would give her and/or DD the tenants' security deposit.

The tenants stated that they are also waiting for disposition of the security deposit and that they had given KV their forwarding address at the end of the tenancy. LD confirmed that she obtained the tenant's forwarding address from KV.

The Act provides that a security deposit runs with the land. Accordingly, where there is a change of ownership of property during a tenancy the former owner usually transfers the security deposit to the new owner. Where there is a change in an owner's agent, the former agent usually transfers the security deposit to the owner or the owner's new agent. It is highly unusual for a former owner or former owner's agent to continue to hold a security deposit where there has been a change of ownership or agency relationship.

A party named on an Application for Dispute Resolution must be either a landlord or a tenant. In this case, the Application for Dispute Resolution names DD as a "landlord" but the standing of DD as "landlord" was called into question. Section 1 of the Act defines a landlord as follows:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or

- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Upon hearing from the parties, I expressed my reservation as to whether DD or LD have standing as “landlords” in this case and that it appeared to me that KV would be the appropriate person named as landlord since she was the owner’s agent at the end of the end of the tenancy, KV may still be the owner’s agent, KV continues to hold the security deposit; and, the definition of “landlord” includes a former landlord where appropriate. It would appear to me that any dispute concerning the condition of the property that the tenants left it would be between the tenants and KV since the tenants have an obligation to return a reasonably clean and undamaged rental unit to the landlord at the end of their tenancy; and, any dispute concerning the condition of the property when DD and/or LD took possession of the property would be between DD and/or LD and KV. KV is not at liberty to release herself of obligations under the Act or to DD and/or LD by simply writing a letter to DD and/or LD especially when she would appear to continue to be the owner’s agent and holding the tenants’ security deposit.

I requested that LD call KV to the hearing with a view to confirming the information presented to me and to seek KV’s consent to amend the Application for Dispute Resolution to name KV as landlord. LD provided me a telephone number and I called that number during the hearing but I only received a voice mail recording. As such, I was unable to hear from KV or amend the application to name KV as landlord.

In light of the above, I find I am not satisfied that DD and/or LD have standing as landlords and I declined to proceed to hear their claims against the tenants. Also, having been unsatisfied that DD or LD is the landlord and they do not hold the tenants’ security deposit, I do not order DD or LD to repay the security deposit to the tenants.

The parties were informed that the tenants remain at liberty to file an Application for Dispute Resolution against their landlord for return of their security deposit and any other claims they may have with respect to their tenancy. Also, the actual landlord,

being the owner or the agent authorized by the owner, may file another Application for Dispute Resolution to seek compensation from the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 03, 2018

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Residential Tenancy Branch